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May 9, 1986

J. Pierce Myers
Deputy General Counsel
Committee on Post Office & Civil Service
309 Cannon House Office Building
House of Representatives
Washington, D.C. 20510

Dear Pierce:

Thank you for sending us your latest draft provision from the retirement legislation providing for CIA administration of subchapter III of chapter 83 of Title 5 as it applies to CIA employees (FERS draft, p. 105, "Amendment to Section 8347"; copy attached). We were a bit surprised to see that it was an extract from a draft document we have not seen before.

The "April 25, 1986 Initial Discussion Draft" of the intelligence provisions, which we were given to review, handled the same issue a bit differently (copy of relevant provision attached).

In the PO&CS version you sent us, the preambular language of paragraph 8347(n)(1) contains the following phrase which does not appear in the corresponding place in the April 25 draft: "in a manner consistent with the administration of this subchapter by the Office" [OPM]. Although we think this phrase is unnecessary, we see no great difficulty in including it if you think it appropriate, as the shift of administration of retirement programs to CIA with respect to CIA employees is intended solely to improve the security of intelligence activities and is not intended in any way to affect the substantive retirement rights of CIA employees. Thus, CIA employees will receive the same treatment under the retirement systems applicable to them as non-CIA federal employees subject to the same systems receive; the only difference is that CIA administrative personnel will handle the system as it applies to CIA employees while OPM administrative personnel handle the system as it applies to non-CIA employees.

In the PO&CS version you sent us, the preambular language of paragraph 8347(n)(1) does not contain the following phrase which does appear in the corresponding place in the April 25 draft: "to the extent considered appropriate by such Director" [Director of Central Intelligence (DCI)]. This phrase is an important one, and should be included in the preambular language for two reasons. First, CIA probably will not be prepared to assume abruptly upon enactment of the new retirement legislation a number of aspects of administration of subchapter III of chapter 83 as it applies to CIA

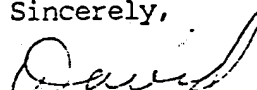
employees. A smooth transition from OPM to CIA of administration as it applies to CIA employees may require time. Second, CIA and OPM may find, after some practical experience under the new retirement administration arrangements, that some minor aspects of administration of subchapter III of chapter 83 as it applies to CIA employees, that involve no security implications, should remain with OPM. Specifying that CIA assumes the administration of chapter 83 for CIA employees to the extent the DCI finds appropriate allows for a smooth transition of administrative responsibility from OPM to CIA and allows for readjustment later if experience shows that readjustment is advisable.

In the PO&CS version you sent us, proposed paragraph 8347(n)(1) contains subparagraphs (A) - (D) specifying particular OPM functions which are transferred to CIA with respect to CIA employees, and a subparagraph (E) which allows the transfer of any other OPM functions to CIA with respect to CIA employees if the DCI, with OPM concurrence, finds it appropriate. We prefer the formulation contained in the April 25 draft which simply and clearly provides that CIA may assume all responsibility for administering subchapter III of subchapter 83 as it applies to CIA employees. This achieves clearly and effectively the security improvement goal which is a primary concern of the five intelligence committee conferees. However, if your formulation is used, then at a minimum two items should be changed. The provision should include, as one of the specifically enumerated functions, that the DCI may authorize and direct disbursements from the Civil Service Retirement Fund, as that will be necessary to achieve the security improvement goal. The provision should also be altered so that subparagraph (E) requires only consultation and coordination with OPM -- not Director, OPM approval -- for CIA to assume non-enumerated functions as to CIA employees, or else OPM resistance at some time in the future could hinder achievement of the security improvement goal.

In the PO&CS version you sent us, paragraph 8347(n)(2) provides that the Director, OPM may furnish information and services to the DCI on the DCI's request as necessary for CIA administration of subchapter III of chapter 83. The April 25 draft contained the same language as your draft, except that it provided that the Director, OPM shall provide the information and services as determined necessary by the DCI. The mandatory language in the April 25 draft should be preserved. In addition to contributing to CIA efficiency in carrying out the provision and achieving the security improvement goal, the mandatory language would minimize the likelihood that, if the CIA and the OPM some day get into an administrative tussle, CIA employees covered by subchapter III of chapter 83 would suffer while CIA and OPM negotiate a solution.

I hope our comments are helpful.

Sincerely,



David S. Addington

Counsel, Subcommittee on Legislation

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